IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. APPLICATION NO. 1703 OF 2004

Ms. Jyoti Saigal .. Applicant.

V/s.

Dhiren Mehta & Ors. ..Respondents.

Shri P.M. Harnur for the Applicant.
Shri A.G. Lala for Respondent No. 2.
Shri K.V. Saste, APP for the Respondent No.3-State.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 25, 2005

PC :-

. Heard counsel for the parties.

2. The substantive relief claimed in this petition is to stay the criminal action launched by the respondent No.2 against the applicant for offence under section 138 of Negotiable Instruments Act, on the argument that the fact whether the applicant was legally liable to pay the amount in question to respondent No.2, will be ascertained and the report will be submitted by the concerned police to the court in the private complaint filed by the applicant against the respondent No.2. The basis on which the

relief is sought before this court, in my view, is ill advised. Whether the applicant is liable to pay any amount to respondent No.2; which is legally enforceable liability of the applicant, is a matter of defence available to the applicant in criminal action for the offence under section 138 of the Negotiable Instruments Act. The applicant will have to establish that position by rebutting the legal presumption in respect of the dishonoured cheque. Even if any adverse report is submitted by the concerned police in private complaint No. 18/Misc. 2004, that by itself will not be of any avail to the applicant. In these circumstances, this petition is dismissed.

3. It is however, made clear that dismissal of this petition may not be understood as expression of opinion on merits in the matter and all the contentions are available of the applicant in criminal action for offence under section 138 of the Negotiable Instruments Act. It will be open to the applicant to take recourse to such remedy in respect of the said proceedings, as may be permissible in law.

4. Ordered accordingly.

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